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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY ESPOSITO, Plaintiff, **v.** **D. KHATRI, M.D.; C. COOK, AGPA; DR. AYMAR; T.H. CALVIN, JR., M.D.,** Defendants.	08CV0742 H WMc **ANSWER TO COMPLAINT; DEMAND FOR JURY TRIAL**

COMES NOW Defendant T.H. Calvin, Jr., and, in response to the Complaint on file herein, admits, denies, and alleges as follows:

1. Answering Paragraph A of the Complaint, Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

2. Answering Paragraph B(1) of the Complaint, Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

3. Answering Paragraph B(2) of the Complaint, Defendant denies the allegations in said Paragraph relating to him. As to the balance of the allegations pertaining to the other named defendants, Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

4. Answering Paragraph C(1) of the Complaint, Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

5. Answering Paragraph C(2) of the Complaint, Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

6. Answering Paragraph C(3), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

7. Answering Paragraph C(4), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

8. Answering Paragraph C(5), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

9. Answering Paragraph C(6), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

10. Answering Paragraph C(7), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

11. Answering Paragraph C(8), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

12. Answering Paragraph C(9), Defendant admits that on August 2, 2007, he sent Dr. Thorton a 5-page discussion and recommendation, but denies the remaining allegations in said Paragraph.

13. Answering Paragraph C(10), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

14. Answering Paragraph C(11), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

15. Answering Paragraph C(12), Defendant admits that on October 25, 2007, he documented Plaintiff's MRI scan, but lacks sufficient information on which to either admit or deny the remaining allegations and, on that basis, denies the remaining allegations in said Paragraph.

16. Answering Paragraph C(13), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

17. Answering Paragraph C(14), Defendant lacks sufficient information on which to either admit or deny the allegations and, on that basis, denies the allegations in said Paragraph.

AS SEPARATE AND AFFIRMATIVE DEFENSES, answering Defendant alleges as follows:

AFFIRMATIVE DEFENSE NO. 1.:

The complaint and each cause of action fail to allege facts sufficient to constitute a cause of action.

AFFIRMATIVE DEFENSE NO. 2.:

The complaint and each cause of action are uncertain.

AFFIRMATIVE DEFENSE NO. 3.:

Any and all alleged happenings and events, damages and injuries, if any there were, were proximately caused and contributed to by the negligence of Plaintiff and others, each and all of whom failed to exercise ordinary care at the times and places alleged in the complaint.

AFFIRMATIVE DEFENSE NO. 4.:

Should Plaintiff recover damages, the amount thereof should be abated, apportioned and reduced to the extent that any other person's or entity's negligence caused or contributed to damages, if any there were.

AFFIRMATIVE DEFENSE NO. 5.:

Plaintiff willingly, voluntarily and knowingly assumed each, every and all the risks and hazards involved in the activities alleged in the complaint.

AFFIRMATIVE DEFENSE NO. 6.:

The complaint and each cause of action are subject to the statutory limitation of California Civil Code section 1431, et seq. relating to joint and several liability for economic and non-economic damages.

AFFIRMATIVE DEFENSE NO. 7.:

The complaint and each cause of action are barred and this Court is without jurisdiction as there has been a failure to exhaust administrative remedies.

AFFIRMATIVE DEFENSE NO. 8.:

Because the complaint is couched in conclusionary terms, all affirmative defenses that may be applicable to the within action cannot be fully anticipated. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is reserved.

AFFIRMATIVE DEFENSE NO. 9.:

The action is barred by the doctrines of waiver and estoppel.

AFFIRMATIVE DEFENSE NO. 10.:

The action is barred by the doctrine of unclean hands.

AFFIRMATIVE DEFENSE NO. 11.:

Plaintiff has waived any right to relief for the causes of action alleged in the complaint.

AFFIRMATIVE DEFENSE NO. 12.:

At all relevant times, Plaintiff failed to mitigate injury and damages.

AFFIRMATIVE DEFENSE NO. 13.:

The action is barred by the doctrines of laches and unreasonable delay in bringing this action.

AFFIRMATIVE DEFENSE NO. 14.:

At all relevant times, Defendant acted independently and not in association or concert with or as agent or servant of any other defendant, including any sued herein under fictitious names, or of the employees or agents of other defendants.

AFFIRMATIVE DEFENSE NO. 15.:

The Complaint fails to state a claim for which relief can be granted against answering Defendant under the Federal Civil Rights Act.

AFFIRMATIVE DEFENSE NO. 16.:

Should Plaintiff recover damages, the amount thereof should be abated, apportioned and reduced to the extent that the negligence of any other person or entity caused or contributed to damages, if any there were.

AFFIRMATIVE DEFENSE NO. 17.:

Defendant did not act with malicious intent to deprive any person of any constitutional right or to cause any other injury and therefore is not liable.

AFFIRMATIVE DEFENSE NO. 18.:

Defendant has not deprived any person of any right, privilege, or immunity guaranteed by the Constitution or laws of the United States. Plaintiff was not deprived of any right, privilege, or immunity guaranteed by the Constitution or laws of the United States.

AFFIRMATIVE DEFENSE NO. 19.:

At all times relevant to this case, Defendant exercised due care and acted only in the execution or enforcement of the law.

AFFIRMATIVE DEFENSE NO. 20.:

Defendant is immune from liability pursuant to the Federal Civil Rights Act since he acted in good faith and entertained an honest, reasonable belief that his actions were necessary.

AFFIRMATIVE DEFENSE NO. 21.:

To the extent any person suffered any detriment, such was unavoidable.

AFFIRMATIVE DEFENSE NO. 22.:

At all times mentioned in the Complaint, Defendant acted in good faith.

AFFIRMATIVE DEFENSE NO. 23.:

Defendant acted at all times within the scope of discretion, in good faith, with due care, and pursuant to applicable rules, regulations, and practices reasonably and in good faith believed to be in accordance with the Constitution and laws of the United States, and Defendant is therefore not liable.

AFFIRMATIVE DEFENSE NO. 24.:

The Complaint fails to state a cause of action for violation of civil rights, as Plaintiff's alleged deprivation of civil rights was not without due process of law.

AFFIRMATIVE DEFENSE NO. 25.:

The Complaint fails to state facts sufficient to constitute a cause of action against any defendant herein in that simple negligence is not a Federal Civil Rights violation.

AFFIRMATIVE DEFENSE NO. 26.:

Answering Defendant was at all relevant times acting within the course and scope of duty of public employment.

AFFIRMATIVE DEFENSE NO. 27.:

At all relevant times, Defendant exercised due care and acted only in the execution or enforcement of the law.

AFFIRMATIVE DEFENSE NO. 28.:

There is no imputed liability between public officers in actions under the Federal Civil Rights Act.

AFFIRMATIVE DEFENSE NO. 29.:

Defendant is entitled to qualified and official and quasi-judicial immunity. Defendant acted at all times herein relevant in good faith, with due care, within the scope of discretion, and pursuant to laws, regulations, rules, and practices reasonably believed to be in accordance with the Constitution and laws of the United States. There is no liability pursuant to the Federal Civil Rights Act where one acts in good faith and entertains an honest, reasonable belief that one's actions are in accord with the clearly-established law. (*Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982).)

WHEREFORE, Defendant prays that:

1. Judgment be rendered in favor of Defendant and against Plaintiff;
2. Plaintiff take nothing by the complaint;
3. Defendant be awarded attorneys' fees and costs of suit incurred herein; and

4. Defendant be awarded such other and further relief as the Court may deem necessary and proper.

Dated: August 12, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

KRISTIN G. HOGUE
Supervising Deputy Attorney General

/s/ Michael P. Cayaban
MICHAEL P. CAYABAN
Deputy Attorney General
Attorneys for Defendant T. H. CALVIN, JR.

Jury trial is hereby demanded.

Dated: August 12, 2008

EDMUND G. BROWN JR.
Attorney General of the State of California

KRISTIN G. HOGUE
Supervising Deputy Attorney General

/s/ Michael P. Cayaban
MICHAEL P. CAYABAN
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